and in the course of which he consumed $600 worth of oxygen, the patient had an empyema which was circumscribed and presented some difficulties in diagnosis and location. When the case was thoroughly worked out, a surgeon was called in who resected a rib at the point indicated to him. Every convenience for performing the operation was offered him, and the physician took all the responsibility with the patient and family. The surgeon made a few subsequent visits, collected a thousand dollars, and at the end of ten weeks' care, several of which were under great strain to the physician, he got $450.

These illustrations could be multiplied without end, and the conclusion which I wish to present is that fee-splitting will go on just as abortions will until you educate the people to understand how much surgery owes to medicine, and to appreciate relative values. The result will be that physicians will be paid more or surgeons less. The abuse will go on until one of those ends is reached.

The doing of unnecessary operations will cease to a large extent when academic standards enter into the control of more hospitals, and the public comes to appreciate what these standards mean. As it is now, there are blacklists in nearly every hospital in San Francisco and certain men cannot put their patients in these hospitals because they are known to do unnecessary operations. A little more of this sort of standard and it would be a great deal easier for the public to separate the sheep from the goats.

Finally, the question of contract and lodge practice. It is the brevity of your answer which leads me to fear that your true and wise reference to there being "evil in their abuses while in their legitimate use they are not necessarily wrong" does not go far enough and may be misunderstood. Contract and lodge practice are not only "not necessarily wrong" but they are absolutely essential and legitimate means of defense for the poor, and they are bound to be a large part of the practice of medicine in the immediate future. An examination of the economic aspect and the necessity of this form of work will convince any fair-minded person that there would have been no medical practice in many pioneer enterprises, had it not been for contract practice. The nation, the state and the municipality have established the absolute necessity of it in the handling of large problems of health and in providing hospital care. Lodge practice with all its abuses is but the poor effort of the inexperienced to work out some system of health insurance. It behooves the profession to recognize this fact and to protect the public by insisting upon legislation that will correct the abuses of lodge practice, and extend in scientific and economic ways the opportunity, to all classes of small wage earners, for health insurance. Not professional, but government regulation—just as it is in the case of life, fire, and accident insurance, is what is needed.

ORIGINAL ARTICLES

EXPERT WITNESS FROM THE STANDPOINT OF THE ATTORNEY.

By OSCAR C. MUELLER.

The present status of expert testimony is unquestionably a disgrace to all the professions, and we should free them from this stigma and have California pioneer remedial legislation.

" 'Believe no expert,' says the cynic Bar,
Yet how unjust—all alike deride.
This swears white black; but straightway haud impar,
An equal sage approves the candid side."

As long ago as 1874, Professor John Ordronaux declared:

"There is a growing tendency to look with distrust upon every form of skilled testimony. Fatal exhibitions of scientific inaccuracy and self-contradiction cannot but weaken public confidence in the value of all such evidence. Some remedy is called for both in the interest of humanity and justice."

Forty years have elapsed with no remedy.

An expert witness should always be qualified either by professional, scientific or technical training, or by practical experience in some field of human activity, conferring on him an especial knowledge not shared by men in general. The question of the competency of an expert has frequently been before the courts. We have a code provision in California, Section 1870 of the Code of Civil Procedure, Subdivision 9, which provides that the opinion of a witness may be given on "question of science, art or trade when he is skilled therein"—and there we end.

A judge of the Supreme Court of the United States declared in a leading case that "experience has shown that opposite opinions of persons professing to be experts may be obtained to any extent; and it often occurs that not only days but even weeks are consumed in examinations to test the skill or knowledge of such witnesses and the correctness of their opinions, wasting time and wearing the patience of both the court and jury, and perplexing instead of elucidating the questions involved in the issue."

In a celebrated case in New York City, the expert testimony required six days for its introduction. Eminent surgeons were called and learned counsel examined them. When the judge charged the jury he told them to disregard all of the expert testimony, as the same was too contradictory!

In the famous Leutgert murder case, tried in Chicago some years ago, the bones of the victim were discovered in a vat. Some of the most widely known osteologists of the age strenuously insisted that the bones in question did not belong to a human being, but belonged to a hog!

In another well-known case three doctors testified regarding the mental capacity of a man. Two of the doctors, of vast experience, differed radically. The third was a young practitioner, and he was believed because of his pronounced im-

partiality. This emphasizes the necessity of court experts or a commission, which I will discuss later on.

EXPERT TESTIMONY WASTE OF TIME.

In a recent case in the Superior Court of Los Angeles County it was necessary to ascertain the physical condition of a boy for the purpose of deciding the question of his custody. It was a contest between divorced parents. When one of the doctors was called Judge Wood stated that he could not prevent the attorneys placing him upon the stand, but he warned them in advance that it would be a waste of time. Referring to this doctor, he said:

"He has been on the stand in my courtroom and testified on the side that paid him so often and in such fashion that I do not place any credence upon his testimony. Many times he has appeared and testified in jury cases. In these instances the court had impotently to hear and to see its effect upon the jury."

Another judge of the same county in a criminal case, in speaking of the medical profession, says:

"I have the highest respect for the profession as a whole, but many physicians of the highest standing refuse to go into court and give expert evidence. They refuse because they know their statements will be looked upon with suspicion."

A case involving considerable expert testimony was that of the investigation of the report of the inheritance tax appraisers in the estate of Ida Hancock Ross. The estate is now pending in Los Angeles County.

Four or five witnesses testified that the value of the estate was seven and one-half to eight million dollars. These experts appeared for the state. The witnesses for the executors swore that the value was from three to three and one-half million dollars—a slight difference of three million dollars. The award of the court was in the neighborhood of three million three hundred thousand dollars. In this Ross estate the highest estimate of the witnesses was $7,028,246, while the highest estimate made by an expert called on behalf of the estate was $3,050,398.

REAL ESTATE EXPERTS.

A case that attracted wide attention was that of opening of Broadway in Los Angeles, between Tenth and Eleventh, and between Twelfth and Pico. According to the witnesses for the property owners the value of the property taken was $2,069,949.38, while the witnesses who testified for the City of Los Angeles was $896,863.62, or a difference of $1,173,085.76. The verdict of the jury was for $1,209,568.57.

In speaking about testimony of paid experts, Judge Walter Bordwell termed their testimony as "mental acrobatism, dexterity and juggling." Continuing, Judge Bordwell says:

"In the very nature of things under such circumstances openness of mind and delivery of testimony free from bias are out of the question. Under such conditions witnesses are saturated with prejudices."

At the present time there are so many technicalities surrounding the introduction of testimony offered by experts that when a layman sits in court and hears the objections made we can understand why Frederick R. Coudert, the eminent New York lawyer, said, in his book "Certainty and Justice":

"The public naturally . . . think the law is a mere Chinese puzzle, enacted by lawyers for the benefit of lawyers."

Perhaps the leading case involving expert testimony in California was that of the Estate of Dolbeer, 149 Cal., 227. Prominent San Francisco lawyers were arrayed against each other. If you will pardon a digression, I would like to say that the San Francisco bar is known everywhere for the ability of its leaders.

THE DOLBEER CASE.

Miss Dolbeer left a very large estate and disappointed relatives instituted proceedings to contest her will. The contestants offered three physicians, none of whom had known Miss Dolbeer during her lifetime. They were asked long hypothetical questions, purporting to give the facts in the case, commencing with the alleged insanity of Miss Dolbeer's mother, then proceeding with various facts surrounding her life, her mental and emotional characteristics and finally her death by her own hand. Justice Henshaw, of the Supreme Court, said:

"These three medical experts in answer to these long hypothetical questions replied that, upon the assumption of the truth of the facts stated, they were of the opinion that 'at the time of her death' Miss Dolbeer was of unsound mind and suffering from a form of insanity known to medical science as 'simple melancholia.' The witnesses were skilled alienists, it may be conceded, but the evidence thus adduced of one who has never seen the person and who bases his opinion upon the facts given in a hypothetical question is evidence the weakest and most unsatisfactory. Such questions themselves are always framed with great particularity to meet the views of the side which presents the expert. They always eliminate from consideration the countervailing evidence which may be of a thousand-fold more strength than the evidence upon which the question is based. They are astutely drawn, and drawn for a purpose, and that purpose never is the presentation of all the evidence. It is never to present the fair and accurate view, but the purpose always is to frame a question such that the answer will announce a predetermined result. This kind of expert testimony, given under such circumstances, even the testimony of able and disinterested witnesses, as no doubt these were, is in the eye of the law of steadily decreasing value. The remedy can only come when the state shall provide that the courts and not the litigants shall call a disinterested body or board of experts who shall review the whole situation and then give their opinion with their reasons therefor to the court and jury regardless of the consequences to either litigant. So and so only can it be hoped to remove the estimate of in-

firmity which attaches at the present time to this kind of evidence."

ALIENIST IN THAW CASE.

The testimony of the alienists in the notorious Thaw case amounted to a bargain and sale of evidence. On account of the great wealth of the members of the defendant's family, it was generally conceded that they employed the expert witnesses to argue the subject of the various forms of dementia, while on the behalf of the State of New York the experts were introduced for the purpose of showing that Thaw's actions were not caused by a diseased brain. Now the tables are turned, and to prevent Thaw being incarcerated in Matteawan his physicians testify that he is of sound mind.

In this case counsel for the State of New York has been placed in a more embarrassing situation than the defendant. In 1907 District Attorney Jerome requested the court to summon alienists to show that Thaw was insane. In 1908, during the trial of the case, after calling the jury's attention to peculiar actions of Thaw, Mr. Jerome said:

"If you gentlemen can see any manic depressive in that, if there is any circulatory insanity in that, if there is any brainstorm there, if there is anything that these bug specialists (the Jerome manner of characterizing eminent alienists) you can see what I cannot see. There is no evidence of delusion in the slightest degree on his part."

In 1909 during a habeas corpus proceeding instituted by Thaw for the purpose of gaining his liberty Jerome took the position that he was insane and examined noted experts to substantiate that claim.

During this proceeding before Judge Mills of New York, seven weeks were devoted to alienists and others who testified on the subject of Thaw's mental condition. There were nearly eighty witnesses examined altogether.

In 1913, after Thaw's escape from Matteawan, Jerome appeared before the grand jury of Dutchess County and asked that Thaw be indicted for the crime of conspiracy. He had to take the position that he was sane because an insane person cannot be charged with a criminal act.

In 1914 Mr. Jerome stated in his brief in the Supreme Court of the United States:

"This department (Department of Justice of New York State) regards Thaw as insane, a menace to society, and a fugitive from justice."

So it will be seen that with the aid of alienists Jerome had him twice sane and twice insane—just as suited his purpose. What a travesty upon the laws!

FEE OF EXPERTS.

Doctor Hammond of New York received a witness fee of $500 from the state in one case. His preparation for the trial occupied considerable length of time; his attendance in court involved many days and his testimony was of the most important nature. This fee was attacked by the defendant in the Supreme Court upon the ground that the physician was prejudiced and in favor of the state by reason of its size, but the Supreme Court of New York did not agree with this contention.

Upon the subject of compensation of expert witnesses, Judge Foster, a well-known law writer, says:

"He is not a witness in the ordinary sense unless called merely to testify to some fact which he has observed—for then he is not an expert. His position and office is that of a sworn interpreter of science to the court."

Some of the states have attempted to regulate the compensation of experts; in particular Iowa, Maine, Massachusetts and Minnesota, the latter, for instance, allowing hydraulic engineers a regular per diem. Some courts have held that an expert witness may refuse to answer questions if he is not compensated as an expert. This is especially true where an expert witness is expected to give testimony of a nature which requires special preparation, investigation, research or examination of any kind by him in order to prepare himself to testify.

HYPOTHETICAL QUESTIONS.

In a murder trial pending in New York six experts were examined; most of them had a national reputation, and were called upon to answer a hypothetical question consisting of fifteen thousand words. Another hypothetical question contained twenty thousand words, and required two hours to read it. This lengthy question was propounded to Doctor Jelley, a Boston expert on insanity, in the famous Tuckerman will contest. It involved the question of the capacity of the testator. The learned doctor answered the twenty thousand word question in three words: "I don't know." A frank answer, but rather perplexing to counsel.

Taylor, in his work on the Law of Evidence, says:

"Expert witnesses become so warped in their judgment by regarding the subject from one point of view that even when conscientiously disposed they are incapable of expressing a candid opinion."

Mr. Francis L. Wellman, a well-known New York lawyer, believes that the testimony of the expert witness must be reckoned with in about sixty per cent of our more important litigated cases.

USE OF WORDS.

One of the common faults of experts is the desire to use many technical words, and thus confuse court and jury.

In a case mentioned by Gilbert Stewart in his work on "Legal Medicine," a surgeon was called to testify on a trial for assault. He stated that he found the injured man "suffering from a severe contusion of the integuments under the left orbit, with great extravasation of blood and eccymosis in the surrounding cellular tissues which were in a state of tumidity." Now, of course, after a jury has listened to such a description, it would seem that the patient was about to die or

that his condition was exceedingly dangerous, while as a matter of fact, the eminent follower of Hippocrates was describing a common ailment, which in the vernacular we call "a black eye."

A rather amusing experience occurred during the examination of Doctor Joseph Collins, a well-known nerve specialist. The case involved a damage suit against the Metropolitan Street Railway Company of New York. The attorney made nothing out of his cross-examination of Doctor Collins and threw this parting boomerang at the witness:

"Counsel—After all, doctor, isn't it a fact that nobody in your profession regards you as a surgeon?

"Doctor—I never regarded myself as one.

"Counsel—You are a neurologist, aren't you?

"Doctor—I am, sir.

"Counsel—A neurologist, pure and simple?

"Doctor—Well, I am moderately pure and altogether simple."

REMEDIES SUGGESTED.

Doctor Wilbur of Syracuse, New York, said:

"Expert testimony should be the colorless light of science, brought to bear upon any case where summoned. It should be impartial and unprejudiced."

Among the reforms proposed by physicians might be mentioned those of Doctor E. W. Taylor of Boston, who urged experts as follows:

"First. To refuse to testify upon the contingent basis.

"Second. To decline to prompt lawyers in the examination of other experts.

"Third. To maintain an inflexible determination to state the truth as he sees it."

Doctor Walton, a celebrated surgeon, writing in a Boston medical journal, said:

"I think one of the dangers in giving expert testimony is the tendency for the expert to feel that he carries the whole case on his own shoulders, and must decide questions that ought to be left to the jury. . . . Finally, the scientific witness should come into court with clean hands and a pure heart, with sincerity of purposes, with a tendency and desire to ascertain and recognize truth whenever it may be found; to conceal nothing, mindful of his oath, which requires him to speak not only the truth, but the whole truth."

Charles W. Eliot, former president of Harvard University, in discussing the popular dissatisfaction with the administration of justice in the United States, claims that the employment by the court of official experts is the most promising of all legislation proposed. Here is the view of a great scholar on this phase of law reform.

The old Roman law provided that a judge could summon experts for the purpose of giving him information.

In 1870 Germany adopted a law providing for expert witnesses appointed by the court. From various sources I learn that it has met with great success.

The Italian courts appoint a commission of experts for the purpose of giving testimony.

The English courts call witnesses on their own motion, especially when technical subjects are involved.

In Michigan an act was passed in 1907 merely limiting the compensation of expert witnesses.

In 1911 an act was introduced in the Senate and Assembly of New York for the purpose of regulating the introduction of medical expert testimony. The act failed because it was claimed that it attempted to create a "doctors' trust." Mr. Clemens Herschel, a noted consulting engineer, stated that if all experts had been included in the bill such an objection could not have been raised, and the bill might have passed.

From my own experience and from talking with many judges, it would seem that a great many of the evils could be eliminated by the court's appointment of experts, to be selected by a judge of the county in which the case is tried, or if desired by the presiding judge in counties like San Francisco and Los Angeles. This expert to have no connection with any public utility corporation or those establishments where personal injury actions are frequently originated and developed. Some maintain a commission would be better than one expert, because we must recognize the honest difference of opinion—even among experts.

EXPERTS SHOULD BE COURT OFFICERS.

In a city like New York the Surrogate (corresponding to our probate judge) frequently has before him will contests in which very large amounts are involved. Of course the most skilful handwriting experts are employed for the purpose of aiding the contestant or respondent in the case. Surrogate Calvin in rendering a decision in a will contest said:

"In all cases wherein expert testimony is required the expert should be employed and paid by the court and be regarded as a court officer."

This statement was made after a long experience in probate hearings.

Hon. G. A. Endlish, a noted Pennsylvania jurist, in an address before the Law Academy of Philadelphia, suggested the following:

"First. Formation of a stricter definition of expert capacity.

"Second. The reasonable limitation of the number of experts to be called in any case.

"Third. The payment of expert witnesses out of the public treasury, at least in the first instance."

By making experts the appointees of the court, and their compensation not only sure but independent of the effect of their testimony, a prominent cause of bias would be eliminated.

Doctor Andrew S. Lobingier, acting for the Los Angeles County Medical Society, and myself, as chairman of the Bar Association of the same county, prepared an act to regulate medical expert testimony and submitted the same to the legislature of 1911. The act passed in the Senate, but no one urged its adoption by the Assembly. Last

year Honorable Frank F. Oster, judge of the Superior Court of San Bernardino County, and Doctor Lobingier and myself met and discussed the framing of a measure so that same would cover all experts. We were joined by Mr. Derleth of the Pacific Coast Consulting Engineers' Association. The bill I am about to read was mainly written by Judge Oster, and while the Los Angeles County Medical Society, the Committee on Amendment of Laws of the Los Angeles Bar Association, and Judge J. Perry Wood, chairman of a committee of the bench of Los Angeles County appointed to examine this bill, made a few suggestions, it is practically the same as originally drawn.

Of course the two principal reasons for the selection of the expert by the county are:

First. That we would obtain impartial testimony, and there would be no object in prejudicing the case in favor of any litigant; and

Secondly. A better class of experts would appear in our courts because the judge would seek to have the ablest physician or engineer or handwriting expert appear, for the purpose of giving testimony.

AN ACT

To amend the Code of Civil Procedure of California by adding thereto a new section to be numbered and known as Section 1871, relating to experts, their appointment by the court, or a judge thereof, and providing for their compensation and manner of examination as witnesses.

The People of the State of California do enact as follows:

Section 1. A new section is hereby added to the Code of Civil Procedure of California, to be numbered and known as Section 1871, and to read as follows:

1871. Whenever it shall be made to appear to any court or judge thereof, either before or during the trial of any action or proceeding, civil or criminal, pending before such court, that expert evidence is, or will be required by the court or any party to such action or proceeding, such court or judge may, on motion of any party, or on motion of such court or judge, appoint one or more experts to investigate and testify at the trial of such action or proceeding relative to the matter or matters as to which such expert evidence is, or will be required, and such court or judge may fix the compensation of such expert or experts for such services, if any, as such expert or experts may have rendered, in addition to his or their services as a witness or witnesses, at such amount or amounts as to the court or judge may seem reasonable. In all criminal actions and proceedings such compensation so fixed shall be a charge against the county in which such action or proceeding is pending and shall be paid out of the treasury of such county on order of the court or judge. In all civil actions and proceedings such compensation shall, in the first instance, be apportioned and charged to the several parties in such proportion as the court or judge may determine and may thereafter be taxed and allowed in like manner as other costs. Nothing contained in this section shall be deemed or construed so as to prevent any party to any action or proceeding from producing other expert evidence as to such matter or matters, but where other expert witnesses are called by a party to an action or proceeding they shall be entitled to the ordinary witness fees only and such witness fees shall be taxed and allowed in like manner as other witness fees. Any expert so appointed by the court may be called and examined as a witness by any party to such an action or proceeding or by the court itself and, when called and examined by the court, may be cross-examined by the several parties to the action or proceeding in such order as the court may direct. When such witness is called and examined by the court, the several parties shall have the same right to object to the questions asked and the evidence adduced as though such witness were called and examined by an adverse party.

The court or judge may, at any time before the trial or during the trial, limit the number of expert witnesses to be called by any party.

ADVANTAGE OF BILL.

An examination of this bill shows it has many advantages:

First. It covers all proceedings, civil and criminal.

Second. It provides that the judge may, on the motion of either of the parties, or, if he desires, he may take the initiative himself, and appoint one or more experts to investigate and testify.

Third. It provides that the court may fix the compensation—because it will differ as to the time employed, the matter involved, the extent of the examination, the character of the expert, and the expenses incurred by him in making his report.

Fourth. In criminal cases the charge is properly against the county. For instance, courts and juries are imposed on frequently by the plea of temporary insanity. An alienist employed by the state would give an unbiased report regardless of its effect.

DEFENSE OF INSANITY.

The defense of insanity is so often put forward by defendants charged with criminal acts that for the last twenty years trial courts have been cautioning juries, and the Supreme Court has upheld this charge of the trial judge to the jury:

"The defense of insanity is one which may be and sometimes is resorted to in cases where the proof of the overt act is so full and complete that any other means of avoiding conviction and establishing punishment seems hopeless. While, therefore, this is a defense to be weighed fully and justly and when satisfactorily established must commend itself to the favorable consideration of the humanity and justice of the jury they are to examine it with care lest an ingenious counterfeit of such a mental disorder should furnish immunity for guilt."

Fifth. In civil cases the compensation shall be taxed as costs in the case. The defeated party would have to pay in the end.

Sixth. Nothing in the act prevents any party to action calling other experts. If he is dissatisfied with the court's expert he is not precluded by their testimony.

Seventh. The act provides that the experts called by the court may be examined and cross-examined by the several parties. The rights of the litigants are thus safeguarded. If any prejudice exists in the mind of the court's expert it can be brought out. Again, even though they are called by the court and examined by the court, nevertheless the parties have the right to interpose the usual objections to questions asked.

Eighth. When the bill was first submitted to the judges of the Superior Court of Los Angeles County an amendment was offered providing that "the court may in its discretion advise the jury, if there be one, that such expert or experts had been appointed by the court." We have eliminated this phase because Article VI, Section 19, of the Constitution of the State of California, provides: "Judges shall not charge juries with respect to

matters of fact, but may state the testimony and declare the law." Of course, this provision of the Constitution is "mandatory and prohibitory" (Article I, Section 22). As Judge Oster says, the Supreme Court of California has repeatedly held that the trial court shall not call attention to one witness or class of witnesses to the prejudice of others. As a matter of fact, counsel on either side can bring to the attention of the jury the fact that the expert was appointed by the court.

Ninth. Another feature which is so essential to have incorporated in our statutes is that portion of the act which provides that the court may limit the number of experts to be called by any party. The unnecessary number of experts called in homicide cases and in actions relating to the condemnation of land has seriously affected the transaction of the business of our courts and hardly a judge on the bench today does not go out of his way to denounce the present latitude permitted in these matters.

Tenth. The act taken as a whole is fair to all. There is no joker in it.

In 1913 this bill passed the Senate without a dissenting vote, but did not come to a vote in the Assembly.

The Oster bill should become a law and thus California will be the pioneer in this much needed remedial legislation.

OFFICIAL MEDICAL EXPERTS.*

By ROSCOE S. GRAY, San Francisco.

(a) The Sociological Relationships of the Problem.

Of course it is understood that the phrase "Official Medical Experts," refers to such "experts" as instrumentalities (whether as witnesses or otherwise) in the judicial determination of controversies.

The fact that the American Medical Association, as the result of three years consideration of the questions relating to expert medical testimony, reached in June, 1914, the conclusions shown at pages 100 and 110 of the Sixty-third volume of the Journal of that Association, justifies the proposition that in the recommended conferences between the medical and legal associations, careful consideration should be given to the sociological relationships involved.

But how shall the verities of life be made to flame forth upon the printed page? All life is a paradox and society is a wilderness of seeming contradictions.

Physical human life is the fruit of an elemental physical passion most easily debased and the debasement of which has become the degradation of civilization and the greatest social and medical peril of the race.

A state of international warfare is devastating a large portion of the civilized world.

Yet against that race peril has arisen a mighty sociological force and throughout the nations we find ample evidence of antipathy to war.

That sociological force battling against that race peril and which has enlisted in its ranks as leaders many from both the medical and legal professions, is education.

The Baroness Bertha von Suttner, who died June 21st, 1914, was no mean authority on "Peace." She was at one time the secretary to Alfred B. Nobel, who established the Nobel Foundation, and as a champion of "the brotherhood of nations," she is said to have been the inspiration that prompted him to offer his peace prize, and in 1905 she received its award. In writing to me from Chicago (where she had gone in the interests of peace and education) under date of September 14th, 1912, she said "Sociology is the scientific road to the world's peace."

It is almost inconceivable that anyone would today disagree with what Jane Addams said September 30th, 1914, as she stepped upon the train in New York for Chicago, referring to the European war, "The whole social fabric is tortured and twisted."

Yet there have been those who lauded war and there are still those who believe that war cannot be avoided. There have been and it would seem there still are those who preach the doctrine that the scarlet woman is the necessary guardian of the purity of the home.

And there are plenty of bright and shining lights in the legal profession that believe justice can be attained in court only through the most rigorous and relentless methods of warfare.

Where and when shall we have a parliament of nations, without distinction as to race or creed, called to consider ways and means for creating and advancing that international education which will develop the power of all nations to work together for the good of the human race?

In criminology, in the office of the publc defender provided for in the freeholders' charter of the County of Los Angeles, the legal profession in the United States has found an example which is awakening the bench and bar from the Atlantic to the Pacific to the unspeakable barbarism of our jurisprudence in court work.

It was natural that we should first awake to the criminal side of our jurisprudence as presenting the futility of our court and police methods for reaching the truth with many frightful results, and The American Institute of Criminal Law and Criminology, an outgrowth of the National Conference on Criminal Law and Criminology held in Chicago in June, 1909, is doing a wonderful work in bringing to bear the experience and help of all classes concerned upon the problems connected with the administration of punitive justice, including the treatment of criminals. And we are now beginning to seriously question the very foundation of a justice, or a system for the administration of justice, that is founded upon the principle of punishment.

Nor are we getting off the track of our problem by this reference as is well shown by the fact that perhaps the best presentation up to that time, of medical expert testimony and the methods of improving the practice, which is available, appear at page 41 et seq. of the issue of July, 1910, of the Journal of that Institute. It is a revision by Hon. William Schofield, Judge of the Superior Court of Massachusetts, of his address read at the semi-annual meeting of the Suffolk District Medical

* Read before a joint meeting of the Bar Association of San Francisco and the San Francisco County Medical Society, October 13, 1914.